In the High Court of Judicature at Madras

Dated: 16/06/2004

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The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice N.KANNADASAN

Habeas Corpus Petition No. 230 of 2004

Mrs.Kumari
W/o.Perumal,
Kedathangal Village,
Mangalam Post,
Tiruvannamalai Taluk & District. .. Petitioner

-vs-

1.State of Tamil Nadu,
rep. by its Secretary to Govt.,
Prohibition & Excise Department,
Fort St. George,
Chennai-600009.

2.The District Collector &
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai. .. Respondents

Prayer:- Petition under Article 226 of the Constitution of India
praying for issuance of a writ of Habeas Corpus, to call for the records
relating to the detention order passed by the second respondent in
D.O.74/2003-C2 dated 24.11.2003, quash the same and direct the respondents to
produce the body of the detenu Perumal, Son of Mottaiya Gounder (now detained
at Central Prison, Vellore) before this Court and set him at liberty.

!For Petitioner : Mr.S.Doraisamy
forMr. S. Kumara Devan

^For Respondents : Mr.Adbudukumar Rajaratnam,
Addl. Public Prosecutor.

:O R D E R

(Order of the Court was made by P.D.DINAKARAN, J.)

The petitioner is the wife of the detenu Perumal, who had been

incarcerated by the order of detention dated 24.11.2003 passed by the second respondent herein, branding him as a bootlegger, under Section 3(1 ) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (for short the Tamil Nadu Act 14 of 19 82).

2. The order of detention came to be passed by the second respondent on the basis of the ground case said to have taken place on 11.10.20 03 within the jurisdiction of the Inspector of Police, Tiruvannamalai Taluk Circle at Mangalam Police Station that the detenu was found to be indulged in selling 15 litres of illicit distilled arrack contained in a white plastic can. On chemical analysis of the same, it was disclosed that the said illicit distilled arrack contained 6.7 mg of atropine, which, in the opinion of the medical officer, would cause death if the person consumed is not given treatment immediately. The detenue was thereafter remanded. The order of

detention is also supported with ten adverse cases of the detenu bearing Crime Nos.190/2 002, 239/2002, 347/2002, 381/2002, 43/2003, 60/2003, 298/2003, 400/20 03, 416/2003 and 1661/2003 on the file of Mangalam Police Station.

3. Mr.S.Doraisamy, learned counsel appearing for the petitioner, while referring to the medical report dated 15.10.2003 issued by the Doctor viz., Dr.Tilakavathy, Government Hospital, Tiruvannamalai, who had given treatment to the complainant, would submit that the Doctor has stated that atropine is an intoxicating poisonous substance and the consumption of the same is likely to cause danger to human life. The learned counsel would further submit that the Doctor has opined that death would be caused depending upon the quantity of arrack consumed with reference to the individual's physical capacity of consumption. Learned counsel would bring to the notice of this court that the detaining authority has only relied upon a portion of the medical report of the Doctor that consumption of arrack mixed with poisonous atropine will definitely cause widespread danger to human life and public health; but there is no mention in the detention order about the opinion of the Doctor that death would be caused depending upon the quantity of arrack consumed with reference to the individual's physical capacity of consumption. In this context, the learned counsel for the petitioner would submit that the above variation would lead to non-application of mind on the part of the detaining authority while passing the impugned order of detention and the impugned order of detention is liable to be set aside.

4. Learned Additional Public Prosecutor appearing for the respondents would submit that the detaining authority based on the materials available on record, came to the conclusion that the detenu was indulged in selling ID arrack mixed with poisonous substance in contravention of the provisions of the Tamil Nadu Prohibition Act and thereby acted in a manner prejudicial to the maintenance of public order and public health and passed the impugned order of detention and the same is sustainable.

5. After hearing the learned counsel for both sides, we are of the view that the detaining authority without properly going through the medical certificate issued by the Doctor and relying upon a portion of the same, has

come to the conclusion that the detenu was indulged in selling the ID arrack mixed with poisonous substance viz. atropine and it would cause death to the person who consumed the same; but ignoring the medical opinion that the death would be caused depending upon the quantity of arrack consumed with reference to the individual' s physical capacity of consumption. The non application of mind on the part of the detaining authority to the opinion of the Doctor that the death would be caused depending upon the quantity of arrack consumed with reference to the individual's physical capacity vitiates the impugned order of detention. Hence, the same is liable to be set aside and accordingly set aside. The Habeas Corpus petition is allowed and the detenu Perumal is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : Yes
Internet: Yes

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To,

1.The Secretary to Govt.,
Prohibition & Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai-600009.

2.The District Collector &
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

3. The Public Prosecutor,
High Court, Chennai.

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